

Before the
Administrative Hearing Commission
State of Missouri



ROBERT MARSH, RN,

Petitioner,

v.

STATE BOARD OF NURSING,

Respondent.

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No. 13-1270 BN

DECISION

Petitioner Robert Marsh, RN's complaint is dismissed because we lack jurisdiction.

Procedure

Mr. Marsh did not timely renew his nursing license, it lapsed, and he paid a monetary penalty to Respondent State Board of Nursing. He appealed to this Commission on July 15, 2013, complaining about the imposition of the penalty. The Board filed a motion to dismiss on July 19, 2013. We notified Mr. Marsh that he should file any response by August 6, 2103, but he filed nothing.

We may grant a motion for involuntary dismissal based on a preponderance of admissible evidence, including "an allegation in the complaint, stipulation, discovery response of the

petitioner, affidavit, or other evidence admissible under the law.” 1 CSR 15-3.436(3).¹ Here, the Board relies in its motion on the complaint, only. Therefore, we make the below Findings of Fact based on the allegations in Mr. Marsh’s complaint.

Findings of Fact

1. Robert Marsh is a licensed, registered nurse and was required to renew his license sometime during the first half of 2013.

2. To renew, Mr. Marsh was required to use the State Board of Nursing’s new, online system. Users must have a Board-issued PIN to access the system. Although he twice asked for one, Mr. Marsh never received a PIN.

3. The renewal deadline passed and Mr. Marsh’s nursing license lapsed.

4. On May 3, 2013, Mr. Marsh called the Board to find out how to get a PIN immediately, so he could renew. He was told he could not be issued a PIN because the renewal deadline had passed, and “to just send in a check.”²

5. Mr. Marsh sent a check for over \$1,500, the penalty for failure to timely renew, the same day.³

Conclusions of Law

This Commission’s jurisdiction comes from the statutes alone. *State Bd. of Regis. for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App. K.C.D. 1974). And we have not been provided statutory authority over every type of appeal involving nursing licensure. Rather,

¹ References to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update, unless otherwise specified.

² See Complaint, fifth (unnumbered) paragraph.

³ Although he does not explicitly allege it, we infer—based on the four corners of his complaint—that Mr. Marsh’s license was in fact renewed when he sent in the check.

§ 621.045.1, RSMo⁴ provides that the Commission “shall conduct hearings and [render decisions] in those cases when, under the law, a license issued by...the [State Board of Nursing] may be revoked or suspended or when the licensee may be placed on probation or when an agency refuses to permit an applicant to be examined...or refuses to issue or renew a license of an applicant who has passed an examination...or who possesses the qualifications for licensure without examination[.]” *See also* § 621.120, RSMo (2000) (describing procedure for an applicant to appeal when “any agency listed in section 621.045 [refuses] to permit [the] applicant to be examined...for licensure or upon refusal of such agency to issue or renew a license of an applicant who has passed an examination...or who possesses the qualifications for licensure without examination”).

More specifically, under the law relevant here, § 335.066.1, RSMo, we may hear an appeal of the Board’s “refus[al] to issue or reinstate any certificate of registration or authority, permit or license required pursuant to chapter 335 for one or any combination of causes stated in subsection 2 of this section[.]” Section 335.066.2(1)—(16) lists 16 causes, or bases, for action against an applicant or licensee, such as drug possession, criminal conviction, use of fraud to secure a license, incompetency, adjudication of insanity, or violation of professional trust.

Mr. Marsh does not allege that his license is revoked or suspended, that the Board has refused to reinstate or renew it, or that the Board took any action against it based on any cause listed in § 335.066.2(1)—(16). He simply complains of the Board’s imposition of a monetary penalty in connection with his failure to timely renew. Such scenario is not a basis for appeal to this Commission under any provision of law.

Accordingly, we have no jurisdiction over Mr. Marsh’s appeal and must dismiss.

⁴ References are to “RSMo” are to the Revised Statutes of Missouri (Supp. 2012).

Summary

Mr. Marsh's complaint is dismissed.

The hearing presently scheduled for October 16, 2013, is canceled.

SO ORDERED on August 14, 2013.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner